

## COLORADO HISTORICAL SOCIETY PROCEDURE MEMORANDUM

Subject: Employee Grievance Procedure

Procedure No. HR - 15 Revised September 7, 2005 Effective October 1, 2005

Approved \_\_\_\_\_, President, Colorado Historical Society

### **Purpose:**

The purpose of the employee grievance procedure at the Colorado Historical Society is to create an open and impartial opportunity that allows the parties to have issues heard, and to provide review mechanisms that are fair, consistent, understandable, and timely. The grievance process is designed to address and resolve problems or complaints, not to be an adversarial process. The intent of this procedure is to attempt to resolve issues at the lowest possible level. Temporary employees are not eligible for this procedure. Employees who are on probation or trial service are eligible for this procedure.

Employee Grievance Procedure HR - 15 is not intended to replace, modify, or supplement the dispute resolution process in the current Performance Pay Program. For disputes related to the Performance Pay Program, please consult the procedure listed in that document. This grievance procedure does not cover issues pertaining to leave sharing, discretionary pay differentials, and/or a performance evaluation and its components that do not result in corrective or disciplinary action. Matters that are directly appealable to, or reviewable by, the Personnel Board or Director (i.e. those that affect the employee's pay, status, or tenure) are covered by the appeal process and are not grievable under this procedure (see the Consolidated Appeal/Dispute Form available on the website at [http://www.colorado.gov/dpa/dhr/pubs/dispute\\_forms.htm](http://www.colorado.gov/dpa/dhr/pubs/dispute_forms.htm)

Items that are grievable are broad in scope. A permanent classified employee may grieve items that do not affect an employee's base pay, status, or tenure, such as working conditions; unlawful discrimination; retaliation for disclosure of information as a "whistleblower"; violation of an employee's constitutional rights or other employment rights; and other actions that are arbitrary, capricious, or contrary to rule or law. The grievance process should not be used to resolve petty, minor disagreements, and should not be in any way involved in harassment of either party.

### **Procedure:**

An overview of the employee grievance procedure:

- A. Informal discussion between aggrieved employee and the employee(s) with whom the grievance is claimed

B. Mediation

C. Informal Grievance

D. Formal Grievance

E. Final Internal Resolution

F. External Resolution (classified employees only)

Supervisors shall provide this procedure to an employee when implementing corrective actions, and when conducting performance evaluations or appraisals that result in corrective action or discipline.

Employees who intend to initiate a grievance must notify the employee's supervisor and the Human Resources Office in writing using the State Grievance Form no later than 10 calendar days after the employee reasonably should have knowledge of the action/practice. The Human Resources Office will be responsible for monitoring the grievance process at each step. General rules apply to each stage of this process and include the following:

- ❑ Copies of all grievance materials must be sent to the Human Resources Office. Failure to timely provide copies of all grievance materials to the Human Resources Office may result in dismissal of the grievance.
- ❑ Timeframes may be waived by mutual agreement of all parties,
- ❑ Referral of an issue to mediation stops the clock at any step in the process, and
- ❑ An employee may be represented by any person of the employee's choice at any step(s) of the grievance process.
- ❑ Only those issues originally presented in writing will be considered throughout any grievance or dispute resolution process or procedure.
- ❑ Copies of materials submitted for external review may be mailed, faxed, or hand-delivered to the Personnel Board or the State Personnel Director, as indicated within this procedure or the corresponding web sites at <http://www.colorado.gov/dpa/spb/> and <http://www.colorado.gov/dpa/>

Accordingly, the following procedures shall be followed by all employees at the Colorado Historical Society:

**I. – Mediation (Optional but highly recommended)**

- A. The State provides a free "Mediation" service for its employees. The parties involved are strongly encouraged to extend every effort to resolve disputes through Mediation before initiating the "Informal Grievance Procedure."

“Mediation” is available from the Department of Personnel and Administration, Division of Human Resources at 303-866-6559. No referral is needed.

- B. Another source for mediation services is through the Colorado State Employee Assistance Program at 303-866-4314. CSEAP provides mediation services, as well as consultations for employees or supervisors on an individual basis on how to deal with disputes in the workplace.
- C. At the option of either party, mediation may be used in an attempt to resolve disputes. If the mediation also involves a grievance, the other party must participate and time limits governing the grievance process are suspended pending the outcome or discontinuance of mediation.
- D. The employee may wish to file a written “Informal Grievance” notice using the State Grievance Form on the shared drive or the state web site specifying what the complaint is, what actions have been taken to resolve the complaint, and the relief requested, with the immediate supervisor in order to meet the required deadlines in the event that satisfactory “Mediation” is not achieved. A copy of the written “Informal Grievance” notice is provided to the Human Resources Office by the employee.

## **II. – Informal Grievance Procedure**

- A. The aggrieved Employee shall make an attempt to resolve the grievance through an informal meeting of the affected employees which shall be convened by the immediate supervisor and, at the employee’s discretion, with the next level of supervision within 10 calendar days of knowledge of the action/practice.
  - 1. If discrimination is alleged by a classified employee, additionally the employee must also file a complaint with the State Personnel Board, 633 17th Street, Suite 1320, Denver, CO 80202 within 10 calendar days, with a copy provided to the Human Resources Office by the employee.
    - a. The Human Resources Director will conduct an investigation, and provide the President with a written report of findings and a recommendation for action within 12 calendar days.
    - b. The President shall decide what action, if any, is appropriate and notify the employee of his or her decision within 12 calendar days of receipt of the Human Resources Director’s report.
  - 2. If discrimination is alleged by a non-classified employee, additionally the employee may file a complaint with the Colorado Civil Rights Division, Department of Regulatory Agencies by following the procedure listed on the following web site: [http://www.dora.state.co.us/civil-rights/complaint\\_process.htm](http://www.dora.state.co.us/civil-rights/complaint_process.htm). The Colorado Civil Rights Division is located at: 1560 Broadway, Suite 1050, Denver, CO 80202 and you may reach them by phone at (303) 894-2997. Call toll-free, (800) CO-CIVIL

(262-4845) if you are calling from outside of the Denver calling area but within the state. This must be done within 10 calendar days and a copy of the complaint provided in writing to the Human Resources Director, describing the situation in detail.

- a. The Human Resources Director will conduct an investigation, and provide the President with a written report of findings and a recommendation for action within 12 calendar days.
- b. The President shall decide what action, if any, is appropriate and notify the employee of his or her decision within 12 calendar days of receipt of the Human Resources Director's report.

3. The aggrieved employee shall put in writing using the Grievance Form available on the following Web site link: <http://www.colorado.gov/dpa/spb/> or on the shared drive at Human Resources to share folder, HR Forms folder, specifying what the complaint is, what actions have been taken to resolve the complaint, and the relief requested. The aggrieved employee and the associated employee(s) and/or immediate supervisor and/or the next level of supervision shall attempt to resolve the complaint through negotiation. The supervisor or next level of supervision will document their negotiation results in writing, including resolution agreements, and will respond to the aggrieved employee, in written format, within 7 calendar days after the grievance is initiated. A copy will be provided to the Human Resources Director.

- B. Decisions reached at this step and agreed upon by the aggrieved employee shall become binding. If the employee disagrees, he or she may proceed to the "Formal Grievance Procedure."

### **III. – Formal Grievance Procedure**

- A. If resolution through the "Informal Grievance Procedure" does not resolve the matter to the employee's satisfaction, the employee may file a written "Formal Grievance" within 5 calendar days after conclusion of the "Informal Grievance Procedure." Again, the State Grievance Form on the shared drive or the state web site is used, specifying what the complaint is, what actions have been taken to resolve the complaint, and the relief requested.
- B. The written grievance shall be sent either to the next level of supervision (if not involved in Step 2) or the Division Director, and the President. A copy of the written "Formal Grievance" is provided to the Human Resources Office by the employee.
- C. The written "Formal Grievance" shall state the complaint, the actions the employee has already taken to resolve the matter, and the relief requested.

- D. The next level of supervision or the Division Director, and the President shall schedule a meeting, investigate the issues, and provide a written decision within 12 calendar days of receipt of the "Formal Grievance." The decision may be hand delivered, e-mailed, or mailed by conventional postal delivery to the employee.
- E. The Division Director may appoint an objective person or panel to make recommendations, or may delegate the decision. If the grievance concerns the actions of the Division Director, the employee proceeds to "Final Internal Resolution." Only the issues set forth in the written "Formal Grievance" shall be considered.
- F. Decisions reached at this step and agreed upon by the aggrieved employee shall become binding. If the employee disagrees, he or she may proceed to "Final Internal Resolution."

#### **IV. – Final Internal Resolution Procedure**

- A. If resolution through the "Formal Grievance Procedure" does not resolve the matter to the employee's satisfaction, the employee may present a written grievance and a copy of the decision from the "Formal Grievance Procedure" to the President within 3 calendar days after conclusion of the "Formal Grievance Procedure."
- B. The President shall schedule a meeting, investigate the issues, and attempt to negotiate a satisfactory resolution. If a resolution can't be negotiated, the President shall render a written decision stating the actions required to resolve the grievance. The written decision shall be provided to the Human Resources Director within 12 calendar days after receipt of the employee's written grievance following the "Formal Grievance Procedure". The President shall render a written notice of decision to the employee within 3 calendar days from the date of the written decision. The decision may be hand delivered, e-mailed, or mailed by conventional postal delivery to the employee.
- C. The President may appoint an objective person or panel to make recommendations, or may delegate the decision. If this option is exercised, the written decision from the President to the Human Resources Director noted in IV. B above shall be provided within 21 calendar days instead 12 days.
- D. Decisions rendered by the President shall become binding, except as noted below.
  - 1. If a classified employee disagrees with the President's decision, he or she may proceed to the "External Resolution Procedure" as outlined in section V. below.
  - 2. If a non-classified employee disagrees with the President's decision, there is no further review. This decision is final and shall be binding on all involved staff.

#### **V. – External Resolution Procedure**

- A. If a classified employee is not satisfied with the decision rendered at “Final Internal Resolution,” the aggrieved employee may file a petition for review with the State Personnel Board, 633 17th Street, Suite 1320, Denver, CO 80202.
- B. The employee must state his/her petition in writing and include copies of all decisions rendered at “Informal Grievance,” “Formal Grievance,” and “Final Internal Resolution” within 10 calendar days after conclusion of the Colorado Historical Society’s “Final Internal Resolution” procedure. The employee shall provide a copy to the Colorado Historical Society’s Human Resources Office.

### **Withdrawal of Grievance**

An employee may withdraw a grievance at any time. Once withdrawn, however, it may not be inaugurated again. The supervisor or department head shall document the withdrawal of a grievance and provide a copy to the Human Resources Director. If the complaining employee is no longer employed by the Colorado Historical Society, including promotions, transfers, or voluntary self-demotions to other agencies of the state of Colorado, any grievance in process is considered concluded. If the complaining employee is separated from employment and does not appeal that separation in writing within 10 calendar days of the separation, any grievance in progress at the Colorado Historical Society or State Personnel Board is considered concluded.

### **Guidance**

At the external stage of the grievance process, the employee has the burden to prove that a department’s internal decision was arbitrary, capricious, or contrary to rule or law. “Burden of proof” is the duty to establish the truth of the ultimate legal conclusion sought based on evidence. Some guidelines used to determine whether the employee has met the burden of proof are listed below.

- ☐ Is the department’s internal decision supported by competent evidence?
- ☐ Is there a clear error of judgment or gross abuse of discretion?
- ☐ Was important information or fact deliberately ignored or refused?
- ☐ The possibility of drawing two inconsistent conclusions from the evidence does not prevent the department’s internal decision from being supported by substantial evidence.
- ☐ Is the error harmless in that it would not change the department’s internal decision? Such harmless error should be mentioned in the rationale.
- ☐ A difference of interpretation or opinion does not necessarily mean the department was arbitrary, capricious, or contrary to rule or law.
- ☐ Is the department’s action or decision reasonable? Could two reasonable people, independently considering the facts, reach the same conclusion?

Additional guidance when utilizing this procedure:

- ☐ If an employee fails to appeal from one level to the next level of this procedure within the time limits listed above, the problem shall be considered settled on the basis of

the last decision and the problem submitted by the employee shall not be subject to further consideration.

- ❑ The Colorado Historical Society reserves the right to impose appropriate corrective action and discipline for any conduct it considers to be disruptive or inappropriate. The circumstances of each situation may differ and the level of disciplinary action may also vary, depending upon factors such as the nature of the offense, whether it is repeated, the employee's work record and the impact of the conduct on the organization.
- ❑ No one will be retaliated against for filing a good faith complaint under this procedure.

### **Authority**

This procedure is based on authority provided by Chapter 8 “Dispute Resolution” of the Personnel Board Rules and Personnel Director’s Administrative Procedures (Rules). In the event that disputes or grievances arise that are not covered by this procedure, or if there is a conflict between this procedure and the Rules, the dispute or grievance shall default to the rules and procedures in Chapter 8 of the Rules. Due to the changes from time to time in the Rules, this procedure may be changed to adapt to and be consistent with the most current version without notice.

This procedure does not prohibit an employee from filing a complaint with the U. S. Department of Labor or the Colorado Department of Regulatory Agencies. This procedure complies with Rule 8-8B for classified state employees. Classified employees who wish to file a grievance must comply with Chapter 8 in the Rules as well as additional requirements that may be set forth within this procedure.

**COLORADO HISTORICAL SOCIETY'S  
GRIEVANCE PROCEDURE HR – 15**

**Personnel Rules, Chapter 8, Rule 8-5B through Rule 8-8D**

| <b>Step</b>                                 | <b>Method</b> | <b>Timeframe</b>  | <b>Employee</b>  | <b>To</b>   | <b>Management</b>  |
|---|---------------|---|--|---|--|
| 1<br>Informal<br>Process<br>HR-15,<br>II.   | Verbal        | Within 10 calendar days of knowledge of action/practice.          | Discusses problem <u>and</u> , if discrimination is alleged, files in writing with the Board/CCRD and the Human Resources Office           | Immediate Supervisor and at the employee's discretion, the next level of supervision.   | Attempts to resolve and inform employee of decision within 7 calendar days after grievance is initiated.   |
| 2(a)<br>Formal<br>Process<br>HR-15,<br>III. | Written       | Within 5 calendar days after conclusion of Step 1.                | States complaint providing appropriate documentation and resolution requested.   | Next level of supervision if not involved at Step 1. If they were, then Division Director or the Vice President, and the President. | Schedules a meeting, investigates issues, and provides a written decision within 12 calendar days of receipt of written grievance.   |
| 2(b)<br>HR-15,<br>IV.                       | Written       | Within 3 calendar days after conclusion of Step 2(a).             | States complaint providing original grievance and copy of written decision from Step 2(a).   | The President.  | Schedules a meeting, investigates issues, and arrives at a written decision within 12 calendar days of receipt of written grievance. President notifies employee of decision within 3 calendar days. |
| 3<br>Board<br>Review<br>HR-15,<br>V.        | Written       | Within 10 calendar days after conclusion of CHS's formal process. | Classified employees only. Files petition for review with original grievance and final decision. Copy of petition sent to Human Resources. | State Personnel Board<br>633 17th Street, Suite 1320<br>Denver, CO 80202-3660   | Review of the record by the Board; hearing is discretionary.   |

**\*Copies of all grievance materials must also be sent to the Human Resource's Office. Failure to timely provide copies of all grievance materials to the Human Resources Office may result in dismissal of the grievance.**

**\*Timeframes may be waived by mutual agreement of all parties.**

**\*Referral of an issue to mediation stops the clock in this procedure.**

**\*An employee may be represented by any person of the employee's choice at any step(s) of the grievance process.**